the above case of *Victorian Railway Commissioners* v. *Coultas and wife* that damages due to mere fright caused by negligence without any malice is not in itself actionable. The court, however, held that the last-mentioned case was not binding on an English court, and would not be followed in the case then before it, and decided in favor of the plaintiffs.

PRINCIPAL AND AGENT—UNDISCLOSED PRINCIPAL.—We are also indebted to the *Law Magazine and Review* for the following comment on the recent House of Lords decision in *Durant* v. *Roberts*, in which it was held (reversing the lower court) that where one is not in fact not an agent for another, but makes a contract, in his own name, with the undisclosed intention that it shall be for another's benefit, such other person cannot ratify the contract and thus become the undisclosed principal:

"In *Durant and Co.* v. *Roberts and Keighley, Maxsted and Co.* ([1900], 1 Q. B. 629), the Court of Appeal determined, in an action for non-acceptance of wheat sold by the plaintiffs to the defendants, that a contract made by a person intending to contract on behalf of another, but without his authority, may be ratified by that other, and so made his own, although the person who made the contract did not profess at the time of making it to be acting on behalf of a principal. This the House of Lords have reversed (111 L. T. N. 83), holding that when a man makes a contract in his own name without disclosing that he is acting as an agent, and without any authority so to act, but with an intention in his own mind to make the contract on behalf of another person, that person cannot ratify the contract. In the Court of Appeal, A. L. Smith, L. J., had dissented from the other judges, and thereupon must be deemed to be on the side of the House of Lords. The decision is a very important one, and of necessity throws discredit on several earlier cases, such as *Watson* v. *Swann* (11 C. B., N. S. 769), and *Tiedemann* v. *Ledermann* ([1899], 2 Q. B. 63)."

The rule thus announced by the House of Lords is sustained in Anson on Cont. (8th ed.) 405; Addison on Cont. (9th ed.) 305; Chitty on Contracts (13th ed.) 264–265. It seems sustained also by the American authorities as cited by Prof. Mechem in his excellent work on Agency, sec. 127. The latter author thus states the rule:

"The act ratified must also have been done by the assumed agent as agent, and in behalf of the principal. If the act was done by him as principal, and on his own account, it cannot thus be ratified."